

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**JOHN D. WILSON,** : **CIVIL ACTION NO. 1:07-CV-1301**

:  
**Plaintiff** : **(Judge Conner)**

:  
v.

**CATHERINE MCVEY, et al.,** :  
:

:  
**Defendants** :

**ORDER**

AND NOW, this 21st day of November, 2007, upon consideration of plaintiff's motion for summary judgment (Doc 12), which the court construed as a motion for default, (see Doc. 14), and upon consideration of defendants' response thereto (Doc. 18) filed in compliance with the court's order dated November 19, 2007, and it appearing that defendants' delay in responding to the complaint was not motivated by bad faith but was instead the result of inadvertent neglect when the case was transferred to defendants' present counsel from a departing predecessor, (see Doc. 18 ¶¶ 5, 8-9), and that as of the date of this order defendants have filed a motion to dismiss the complaint (see Doc. 16), and it further appearing that the delay has not prejudiced plaintiff's ability to pursue his case on the merits, and the court preferring to resolve cases on the merits rather than through default, see Hill v. Williamsport Police Dep't, 69 F. App'x 49, 51 (3d Cir. 2003) (citing Hritz v. Woma Corp, 732 F.2d 1178, 1181 (3d Cir. 1984) (stating that cases should be "disposed of on the merits whenever practicable")), is hereby ORDERED as follows:

1. Plaintiff's motion for summary judgment (Doc. 12), which the court construed as a motion for default, is DENIED. Cf. Collins v. Chichester Sch. Dist., No. Civ.A. 96-6039, 1998 WL 351718, at \*8 (E.D. Pa. June 29, 1998) (denying motion for default judgment based upon the defendant's non-prejudicial, inadvertent delay in responding to the plaintiff's complaint). This denial is without prejudice to plaintiff's right to file a motion for summary judgment at a later time in accordance with Rule 56 of the Federal Rules of Civil Procedure.
2. Plaintiff shall file, on or before December 10, 2007, a brief in opposition to defendants' motion to dismiss (Doc. 16) plaintiff's complaint. See L.R. 7.6 (requiring a party opposing a motion to file a responsive brief within fifteen days of service of the motion); see also FED. R. CIV. P. 6 (stating that a party required to act within a prescribed time after service of a document receives an additional three days in which to respond). The brief shall comply with the requirements of Local Rule 7.8. Failure to file the brief in a timely manner will result in the motion to dismiss being deemed unopposed. See L.R. 7.6.

S/ Christopher C. Conner  
CHRISTOPHER C. CONNER  
United States District Judge